

### **Remarks**

The Final Office Action of January 23, 2009 and Advisory Action of May 4, 2009 have been carefully considered. Claim 33 is currently amended. Claims 33 - 60 are presently pending.

### **The 35 U.S.C. §§ 103**

Claims 33 – 35, 40 - 51 and 57 - 60 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 2,206,697 to Harter ("Harter") in view of U.S. Patent No. 4,558,609 to Kim. This rejection is traversed. The combination of Harter and Kim fail to teach or suggest the claimed invention. The following facts point to a preponderance of evidence favoring the unobviousness of the combination of Harter and Kim. The lack of prior art within the field of simulated weapons has perceived a need not addressed by one skilled in the art whereas applicant has eliminated the need through an innovative device. Accordingly, Kim is not properly combined with Harter.

Claim 33 is amended to clarify the structural differences between the claimed invention and the cited references. Support for the amendment can be found throughout the specification and particularly at page 6, line 23 – page 7, line 28 and the Figures. The structural differences differentiate the claimed invention from the combined cited art and perform a different function. The structural differences are necessary in that the claimed invention is in a different art than the cited references and addresses a problem not encountered in the art of the cited references.

The currently claimed device recites (among other features) a simulated weapon blade element having a complementary interdependent shaped tang pivotally affixed

within and extending from said shaped cutout operably restrained to be longitudinally slidable and rotatable about the said pivotally affixed point to permit said simulated weapon blade element compound movement from a first position to a plurality of second positions. The claimed design is structured to function to close a single circuit in a plurality of blade positions resulting in a simple compact design to fit into a handle. Such a device is not contemplated, taught, suggested or expected in the combined prior art.

Harter and Kim reflect the level of ordinary skill and invention in the pertinent art.

Harter discloses a foil which is used in the game of fencing. Harter is not and does not simulate a sharp edged weapon and has no sharp edges. The foil is specifically designed to sense contact only in one direction: a touch on the very tip of the foil and only at the tip.

Kim discloses a joystick. The joystick is used for controlling the action or outcome on a video screen and is not intended, designed or contemplated to detect an action.

While both Harter and Kim use contacts and actuators to close a circuit, the similarities end there. Both devices were designed for, and accomplish, different purposes. Harter detects an action at the tip of an epee and houses electrical components in a bell separate from the handle and Kim is designed to control an action on a video screen. Neither device simulates a sharp edged device or weapon. Accordingly, neither reference is in the same field as a simulated edged weapon i.e. knife, sword etc. In use, neither the foil nor joystick is or could be used in a manner to replicate a device having a sharp edge.

That neither reference is relevant to edged weapons or simulated edged weapons is telling.

The Advisory Action's indicates the combination of Harter with Kim would be obvious to one skilled in the art. The Applicant disagrees. The art of the present invention is not a device that registers force by closing contacts but rather it is an innovative simulated edged weapon and functions as such. And no references were provided in the field of art. The fact that the references can be combined or modified does not render the resultant combination obvious. The present rejection is based on a general reconstruction of the device based on impermissible hindsight reasoning. There is no reason given why one of ordinary skill in the art of the claimed invention would be impelled to look to Harter and Kim as a reference to achieve the claimed invention or possess the knowledge or skill to render him capable of combining the references. The applicant's device shows the recognition to the problem.

One of ordinary skill in the art would not be impelled or motivated to develop the simulated sharp edged invention by combining Harter and Kim.

Harter's foil, the primary reference, cannot be modified. There is nothing that can be done to modify or improve the pressure switch at the tip, or the foil. The foil does what it is intended to do, therefore there would be no reason for one skilled in the art to improve or modify the device. Furthermore one skilled in the art of sharp edged devices would certainly not look to Harter because Harter is not relevant to a sharp edged device. Moreover, there is nothing in Harter to be improved or modified.

Kim's joystick, the secondary reference teaches a plurality of switches, the joystick being an actuator structured to move in an unlimited tilting motion to close the

switch corresponding to the joystick position. A second actuator rod, within the joystick and corresponding switch provides yet another direction of activation.

Kim does not teach, suggest, or provide the needed function and structure to achieve the results of the claimed invention which recites a simulated weapon blade element having a complementary interdependent shaped tang pivotally affixed within and extending from said shaped cutout operably restrained to be longitudinally slidable and rotatable about the said pivotally affixed point to permit said simulated weapon blade element compound movement from a first position to a plurality of second positions fitting into a handle. Therefore, one of ordinary skill in the art would not be impelled or motivated to develop the claimed invention by combination of Harter and Kim without undue experimentation and modification to obtain a predictable result.

To the contrary, the proposed modification of Harter, the primary reference, to replace the fixed simulated element of Harter with the movably mounted element and corresponding sensors of Kim in order to allow for sensing of force in multiple directions, would render Harter's foil unsatisfactory to be used in the game of fencing and inoperable for its intended purpose providing no suggestion or motivation to make the proposed modification.

The above proposed modification of Harter would also change the principal of operation of Harter rendering the teachings unobvious to one skilled in the art.

The Advisory Action indicates that the unlimited tilting movement of the joystick is limited to a finite range of motion by the structure of the housing, and it would have been within one of ordinary skill in the art at the time of the invention to have made the

range of motion of the combined invention consistent with that of the simulated element. Kim however, is structurally different from the currently claimed invention.

The joystick of Kim as previously stated uses two actuators, the joystick and a rod within the joystick and multiple switches to make contact with each direction of the joystick and rod. If the movement were limited to an up and down motion as indicated, the joystick element still could not move in an inward direction. If the joystick was a blade, and someone grabbed the blade, the blade would not and could not detect and move inward to alert of a stabbing or cutting motion. If the structure of the combined inventions were limited to one switch and one movable blade element, the device would not perform its intended function.

The range of motion is not limited to just up and down but is more complex. As recited in the Claims, Kim's structure and function is different and requires more structural elements than the claimed invention, namely Kim requires one actuator and switch for each direction of movement of the joystick and rod within the joystick.

In contrast, the innovative simulated sharp edged device employs a single switch resulting from the simplicity of the claimed structure to detect movement in a plurality of directions in a simple compact design that fits into a handle.

Claims 36 – 39 and 52 - 56 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 2,206,697 to Harter ("Harter") in view of U.S. Patent No. 4,558,609 to Kim, and in further view of U.S. Patent No. 4,772,028 to Rockhold et al. For the reasons discussed above, Claims 36 – 39 and 52 - 56 are not taught or suggested by Harter in view of Kim.

### **Conclusion**

The instant application is believed to be in condition for allowance. A Notice of Allowance of Claims 33 - 60 is respectfully requested. The Examiner is invited to telephone the undersigned at (908) 722-0700 if it is believed that further discussions, and/or additional amendment would help advance the prosecution of the instant application.

If any extension of time for this response is required, applicants request that this be considered a petition therefore. Please charge any required petition fee to Deposit Account No. 14-1263.

Respectfully submitted,

By 

Christopher S. Casieri  
Attorney for Applicants  
Reg. No. 50,919

May 26, 2009

NORRIS MCLAUGHLIN & MARCUS, PA.  
721 Route 202 - 206  
P.O. BOX 5933  
Bridgewater, NJ 08807-5933  
Telephone: (908) 722-0700  
Fax: (908) 722-0755

Attorney Docket No.: 108710 001